

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JAMES LINLOR,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 1:17-CV-00013(JCC/JFA)
)	
MICHAEL POLSON,)	
)	
Defendant.)	
_____)	

PUBLIC MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO SEAL

For the reasons set forth in detail below, Defendant Michael Polson, through undersigned counsel, moves the Court pursuant to Local Rule 5(c), and the Court’s June 22, 2017 order, for leave to file under seal the documents found at Docket Numbers 27, 43, and 44 on this Court’s docket for this action.

Defendant, Michael Polson, pursuant the Court’s June 22, 2017 order, hereby moves the Court for an Order directing that Dkt. Nos. 27, 43, and 44 be placed under seal and allowing those records to remain under seal. Placing these documents under seal is appropriate to protect the Plaintiff’s privacy, for the reasons that this Court identified during an oral hearing conducted on June 22, 2017.

Public access to judicial records is “protected both by the common law and the First Amendment.” *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). “The common law presumes a right of the public to inspect and copy ‘all judicial records and documents.’” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)).

However, the common law presumption in favor of public access can be overcome by a showing that a litigant has “some significant interest that outweighs the presumption.” *Rushford*

v. New Yorker Magazine, Inc., 846 F.2d 249, 253 (4th Cir. 1988). Before ordering the sealing of documents, a court “must give the public notice of the request to seal and a reasonable opportunity to challenge the request; it must consider less drastic alternatives to sealing; and if it decides to seal it must state the reasons (and specific supporting findings) for its decision and the reasons for rejecting alternatives to sealing.” *Id.*; *see also Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000). This Court has incorporated these “*Ashcraft* factors” into its local rules. *See* LOC. CIV. R. 5.¹

Defendant respectfully submits that all relevant standards, as well as the “*Ashcraft* factors,” are satisfied by the circumstances presented here, and that there is clearly a “compelling government interest” that outweighs the presumption of public access to this single document. *Rushford*, 846 F.2d at 253. By filing this public memorandum, Defendant has complied with the first *Ashcraft* factor, which requires public notice and opportunity to comment. Moreover, Defendant is pursuing the least drastic alternative to sealing the entirety of these documents by substituting narrowly redacted documents.

The sealing of the documents is necessary because further dissemination of the information in the public record may compromise plaintiff’s personal information and otherwise be detrimental to his privacy. *See Stone v. University of Md. Medical System Corp.*, 855 F.2d 178

¹ Local Rule 5(C) requires that the party moving to seal documents provide:

- (1) [a] non-confidential description of what is to be sealed; (2)[a] statement as to why sealing is necessary, and why another procedure will not suffice;
- (3)[r]eferences to governing case law; and (4)[u]nless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing.

The rule also provides that the moving party must provide a proposed order reciting “the findings required by governing case law to support the proposed sealing.”

(4th Cir. 1988) (setting out the standard for sealing documents protected by the common law right of access based on a weighing of “competing interests,” as well as the higher standard for sealing documents protected by the First Amendment based on a showing that the restriction is “narrowly tailored” and serves a “compelling interest”); *see also Krakauer v. Dish Network, LLC*, 2015 WL 12750446, at *2 (M.D.N.C. Nov. 18, 2015) (holding that litigant had “identified a significant interest in support of sealing the limited personal information at issue”).

Defendant respectfully requests that the Court seal Dkt. Nos. 27, 43, and 44. Per the discussion at the June 22, 2017 hearing, and the subsequent Court order, defendant will be filing redacted versions of Dkt. Nos. 27, 43, and 44 in the public record, once his counsel ensures that all potentially-problematic references have been redacted.

Respectfully submitted,

DANA J. BOENTE
UNITED STATES ATTORNEY

By: _____/s/_____
NICOLE N. MURLEY
Special Assistant U.S. Attorney
DENNIS C. BARGHAAN, JR.
Deputy Chief, Civil Division
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: (703) 299-3831
Fax: (703) 299-3983
Email: Nicole.N.Murley@usdoj.gov

DATE: June 22, 2017

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I caused a true and correct copy of the foregoing to be sent to the following via first-class mail:

James Linlor
1405 S. Fern Street
#90341
Arlington, VA 22202

Date: June 22, 2017

_____/s/_____
NICOLE N. MURLEY
Special Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: (703) 299-3831
Fax: (703) 299-3983
Email: Nicole.N.Murley@usdoj.gov

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